

CONGRESSIONAL RESEARCH SERVICE,
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Washington, DC, October 26, 2000.
MEMORANDUM

To: Hon. Charles Grassley, Attention: John McMickle

From: Robin Jeweler, Legislative Attorney,
American Law Division

Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. § 523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. Our search did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.

The only reported decision identified by the search is *Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn)*, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. § 523(a)(6), which excepts claims for "willful and malicious" injury. The court surveyed the extant and somewhat discrepant standards for finding "willful and malicious" conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

"[W]hen a court of the United States issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of violation and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.'"—242 B.R. at 238.

Mr. BIDEN. Again, Mr. President, the only case I could find, in fact, held, as I had predicted, that willful and malicious conduct denies you from being discharged in bankruptcy, in a case where a woman was arrested for violating a restraining order or getting too close to the clinic, tried to discharge the fines against her in bankruptcy, and could not.

I repeat: No one has escaped liability under the Fair Access to Clinic Entrances Act through the abuse of the bankruptcy code, not one. As strongly as feelings are on both sides of this issue, the Schumer amendment is, I must say, a solution in search of a problem. I would support it just to make sure we have the extra protection, but in the absence of the Schumer amendment, there is no reason for the Senate to reverse its opinion on the legislation that had received such strong support.

We voted today on trying to get to a conference report that had a strong Senate stamp on it. I think we made a mistake. I think part of the reason why we made a mistake in not invoking cloture was we had a number of absences. There are 16 or 17 or 18 absences, as I

count it; 15 or thereabouts were for cloture. But we will come back to it again, as the majority leader has said.

This does not in any way do anything to allow people to violate the free access to clinics law. And it actually helps women and children who depend on support payments and alimony payments. I will speak to it more later.

I see the majority leader is on the floor for important business. I thank the Chair and yield the floor.

Mr. LOTT. Mr. President, I thank Senator BIDEN for his comments and for yielding the floor at this time.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 122

Mr. LOTT. Mr. President, I ask unanimous consent that at 2:15 p.m., the Senate turn to the continuing resolution, H.J. Res. 122, if received from the House, and the resolution be read the third time, agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2000

Mr. LOTT. Mr. President, I further ask unanimous consent that the Senate proceed immediately to Calendar No. 428, H.J. Res. 84, and following the reporting by the clerk, the amendment at the desk sponsored by myself be agreed to, the resolution be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (H.J. Res. 84) making further continuing appropriations for the fiscal year 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

The amendment (No. 4357) was agreed to, as follows:

Strike all after the resolving clause and insert the following:

That Public Law 106-275, is further amended by striking the date specified in section 106(c) and inserting "November 14, 2000."

Amend the title so as to read: "Making further continuing appropriations for the fiscal year 2001, and for other purposes."

The resolution (H.J. Res. 84), as amended, was read the third time and passed.

Mr. LOTT. Mr. President, I announce then to the Senate that the continuing resolution to be passed at 2:15 today provides for a continuing of the Government for 1 day. The resolution just passed provides for Government funding through November 14, 2000.

I thank the Democratic leader for his cooperation on this. I know he has been

involved in this process, trying to find a date that is fair and reasonable to all interested parties. I know it is not easy, but I think this is the right thing to do. I hope the House will accept this resolution and then we would proceed to wrap things up after that.

In light of this agreement, there will be no further votes today. All Senators will be notified when the next vote will occur in the Senate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the majority leader leaves, we understand his role. He is the leader here, and it is not easy. I can't speak for everyone on this side, but I can speak for a few. We hope when we come back that we will come back with a fresh view as to what needs to be done and hopefully we can get things done.

I ask the leader, is there some assurance—I guess that is the word—is there some certainty that the House will accept this? What has the leader learned?

Mr. LOTT. Mr. President, I have spoken to the Speaker of the House. There have been staff contacts with the leadership on both sides of the aisle. It is my impression that the leadership on both sides will work for this to be accepted. We had some discussion about a different date, but the House felt very strongly that this date was preferred to the later one, and that is basically one of the reasons why we settled on this date. Hopefully, they will move quickly to accept this and then we will be able to go do our responsibilities in other areas.

I say also that while we will be home and will not be here for awhile, there has been further progress made on the Labor-HHS and Education appropriations bill. I understand there are only a few issues remaining. The staff will not be on vacation. Work will continue. It would be my hope that the areas of disagreement can be worked out and when we come back on November 14, we will have a vote or two and that is all, that we would be done with it. But hope springs eternal, and it doesn't always come true. That is what we are thinking about right now.

Mr. REID. I say to the leader, the President is excited about this. It is my understanding that he will do what is necessary in this instance. I repeat that when we come back here, I hope we can move this forward. With minor exceptions, the work done by Senator STEVENS and Senator BYRD and others on the Labor-HHS bill is really good work. I hope we can wrap it up very quickly.

Mr. LOTT. We have seen here today persistence does pay off. Yesterday very little was said about it, but a lot of credit goes to the members of the committee that produced the Water Resources Development Act under the chairmanship of BOB SMITH. There was some disagreements with the House,